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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-199390

DATE: November 3, 1980

MATTER OF: Gulton Industries Inc., Engineered
Magnetics Division

DIGEST:

1. Procurement of contaminated fuel detectors by formal advertising is proper where adequate specifications were available and there is no allegation of ambiguity. Fact equipment is of a highly technical and specialized nature is insufficient by itself to justify negotiation.
2. Agency properly included in its evaluation of bids offered prompt payment discount.

Gulton Industries Inc., Engineered Magnetics Division (Gulton) has protested the issuance of invitation for bids (IFB) No. N00104-80-B-1104 by the Department of the Navy, Ships Parts Control Center (SPCC) for the manufacture of contaminated fuel detectors (CFD) on the basis that the procurement should have been negotiated rather than advertised. For the reasons stated the protest is denied.

SPCC had previously procured CFD's by formal advertising. In the prior procurement, IFB No. N00104-80-B-0461, SPCC solicited bids for the manufacture of CFD's in accordance with the identical specification. Gulton did not protest the issuance of this IFB and submitted a timely, though not the lowest, bid. The low bidder was Telectro-Mek, Inc. (TMI) who is also the low bidder for the protested solicitation.

The Armed Services Procurement Act, 10 U.S.C. § 2304(a), specifically mandates that defense procurements be conducted by means of formal advertising whenever feasible and practical. This statutory mandate in favor

Protest Alleging

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of advertised procurement is implemented by Defense Acquisition Regulation § 2-102.1(a) which requires that procurements be conducted by formal advertising whenever feasible and practicable, even when it might otherwise be permissible to use negotiations. National Presto Industries, Inc., B-195679, December 19, 1979, 79-2 CPD 418; 51 Comp. Gen. 637, 639 (1972).

In its protest, Gulton observes that the specifications for this item were changed relatively recently; that a CFD has not as yet been built to this specification nor have first article tests been performed under it, and that the specification contains exacting electronic accuracy requirements. Under these circumstances, Gulton contends, the procurement should be a negotiated one in which technical proposals would be submitted so that the offerors' "technical and manufacturing capabilities" could be evaluated.

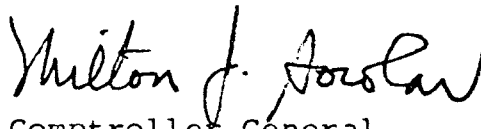
Gulton's arguments fall short of showing that formal advertising was not feasible or practicable or that any of the statutory exceptions to the use of formal advertising apply. While the electronic accuracy specifications may be stringent, they are clearly expressed and Gulton does not allege they are not an adequate basis upon which to prepare a bid. (As TMI points out, earlier this year Gulton submitted a bid in response to an advertised procurement of this item containing the identical specifications.) The use of formal advertising is not precluded merely because a procurement is for complex or highly technical supplies or services. In Informatics, Inc., B-190203, March 20, 1978, 78-1 CPD 215, we stated:

"* * * To permit the use of negotiations under the circumstances of this case would be to suggest, in effect, that negotiation is authorized in any instance where a complex product is being procured, and the agency desires to insure the offeror's understanding of an admittedly detailed specification."

Accordingly, we find that the solicitation was properly advertised.

In the course of commenting upon Gulton's protest, counsel for TMI stated that his client "offered prompt payment discounts of 1% for payment within 10 days and 1/2% for payment within 20 days." Based upon this description of the bid, Gulton argued that the one-half percent prompt payment discount should not be considered in evaluating offers for award, since an offer of a discount "within" 20 days was "less" than 20 days. We need not decide the issue raised by Gulton, since Gulton's argument relies upon counsel's description of the bid, not on the bid itself, upon which TMI simply entered its offered discount in block 16 of the Standard Form 33. There is no question but that the agency properly evaluated the 20-day discount.

The protest is denied.


For the Comptroller General
of the United States